

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 02-3447

Upsher-Smith Laboratories, Inc.,	*	
	*	
Plaintiff - Appellant,	*	Appeal from the United States
	*	District Court for the
v.	*	District of Minnesota.
	*	
Federal Insurance Company,	*	[UNPUBLISHED]
	*	
Defendant - Appellee.	*	

Submitted: May 14, 2003
Filed: June 19, 2003

Before LOKEN, Chief Judge, BRIGHT, Circuit Judge, and SMITH CAMP¹, District Judge.

PER CURIAM.

This case relates to insurance coverage. Upsher-Smith Laboratories (“Upsher-Smith”) sought a declaration of the duty to defend under a policy issued by Federal Insurance Company (“Federal”) for a complaint filed by the Federal Trade Commission (“FTC”) and more than forty private civil litigation actions. Upsher-Smith tendered the defense in the actions to Federal, and Federal refused

¹The Honorable Laurie Smith Camp, United States District Judge for the District of Nebraska, sitting by designation.

to defend Upsher-Smith, stating the activity complained of fell under the antitrust exclusion in the policy. Upsher-Smith brought a declaratory judgment action against Federal to enforce Federal's duty to defend. Since this is a diversity action, Minnesota law controls in its disposition.

The district court² granted summary judgment in favor of Federal, determining that the policy language was unambiguous and that the activity complained of in all the relevant actions fell within the scope of the antitrust exclusion. The court ruled that Federal had no duty to defend.

On appeal, Upsher-Smith argues the court misconstrued the language of the exclusion and that Federal has a duty to defend on the common law claims related to fraud and unjust enrichment raised in the private actions.

We affirm the district court on the basis of its well-reasoned order, published at Upsher-Smith Lab., Inc. v. Federal Ins. Co., ___ F.Supp.2d ___, No. CIV.01-1573, 2002 WL 32100695 (D. Minn. Aug. 29, 2002).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

²The Honorable David S. Doty, United States District Judge for the District of Minnesota.